



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XR042**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Port of Kalama Expansion Project on the Lower Columbia River**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; reissuance of incidental harassment authorization.

**SUMMARY:** NMFS has received a request from the Port of Kalama (POK) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates that are one year later (October 19, 2019 – October 18, 2020). The initial IHA authorized take of three species of marine mammals, by Level A and Level B harassment, incidental to construction activities associated with an expansion project at the POK on the Lower Columbia River, Washington. The project has been delayed and none of the work covered in the initial IHA (effective October 18, 2018 – October 18, 2019) has been conducted. The scope of the activities and anticipated effects remain the same, authorized take numbers would not change, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2018 IHA referenced above. NMFS is, therefore, issuing a second IHA to cover the identical incidental take analyzed and authorized in the initial IHA.

**DATES:** This authorization is effective from October 19, 2019 through October 18, 2020.

**ADDRESSES:** An electronic copy of the final 2018 IHA previously issued to POK, POK's application, and the **Federal Register** notices proposing and issuing the 2018 IHA may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see FOR FURTHER INFORMATION CONTACT).

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On September 28, 2015, we received a request from the POK for authorization of the taking, by Level B harassment only, of marine mammals incidental to the construction associated with the Port of Kalama Expansion Project, which involved construction of the Kalama Marine Manufacturing and Export Facility including a new marine terminal for the export of methanol, and installation of engineered log jams, restoration of riparian wetlands, and the removal of existing wood piles in a side channel as mitigation activities. The specified activity is expected to result in the take of three species of marine mammals (harbor seals, California sea lions, and Steller sea lions). A final version of the application, which we deemed adequate and complete, was submitted on December 10, 2015. We published a notice of a proposed IHA and request for comments on March 21, 2016 (81 FR 715064). After the public comment period and before we issued the final IHA, POK requested that we issue the IHA for 2017 instead of the 2016 work

season. We subsequently published the final notice of our issuance of the IHA on December 12, 2016 (81 FR 89436), effective from September 1, 2017-August 31, 2018. In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA.

On June 21, 2018, POK informed NMFS that work relevant to the specified activity considered in the MMPA analysis for the 2017-2018 IHA was postponed and would not be completed. POK requested that the IHA be issued to be effective for the period from 2018 - 2019. In support of that request, POK submitted an application addendum affirming that no change in the proposed activities is anticipated and that no new information regarding the abundance of marine mammals is available that would change the previous analysis and findings. A notice for the proposed incidental take authorization was published on July 25, 2018 (83 FR 35220), and a corrected notice was published on August 14, 2018 (83 FR 40257). On November 13, 2018, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Port of Kalama Expansion Project (83 FR 56304). The effective dates of that IHA were October 18, 2018 through October 18, 2019.

On August 21, 2019, POK informed NMFS that the project was being delayed by one year. None of the work identified in the IHA (*i.e.* pile driving and removal) has occurred and no take of any marine mammals has occurred since the effective date of the initial IHA. POK submitted a formal request for a new identical IHA that would be effective from October 19, 2019 through October 18, 2020, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, an IHA is appropriate.

### **Summary of Specified Activity and Anticipated Impacts**

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

Planned activities include construction of a marine terminal and dock/pier for the export of methanol, and associated compensatory mitigation activities for the purposes of offsetting habitat effects from the action. Specifically, the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the 2018 IHA. The mitigation and monitoring are also identical to the 2018 IHA and will include implementing shutdown procedures if any marine mammal approaches or enters the Level A harassment zone(s), limiting construction to daylight hours only, using bubble curtains during impact driving of steel piles, using soft-start during impact pile driving, and monitoring and reporting of qualified protected species observers (PSOs).

Species that are expected to be taken by the planned activity include harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and Steller sea lion (*Eumetopias jubatus*).

The takes authorized in the 2018 IHA are presented in Table 1.

**Table 1. Authorized Take Amount by Species.**

Species	Level A	Level B	Total Take
Harbor seal	10	1,530	1953
California sea lion	0	372	372
Steller sea lion	0	372	372

A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. NMFS has reviewed recent Stock Assessment Reports, information on

relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the original IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the 2018-2019 IHA for the POK's Port of Kalama Expansion Project (83 FR 56304; November 13, 2018), the **Federal Register** notice of proposed IHA for the 2018-2019 IHA (83 FR 35220; July 25, 2018), the corrected **Federal Register** notice of proposed IHA for the 2018-2019 IHA (83 FR 40257; August 14, 2018), the **Federal Register** notice of the issuance of the 2017-2018 IHA (81 FR 89436, December 12, 2016), the **Federal Register** notice of the proposed IHA (81 FR 15064, March 21, 2016), POK's application (and 2018 application addendum), and all associated references and documents.

### **Determinations**

POK will conduct activities identical to those analyzed in the previous 2018 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the 2018 IHA and no new information has emerged that would change those findings. The re-issued 2019 IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4)

POK's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

### **Authorization**

NMFS has issued an IHA to POK for in-water construction activities associated with the POK Expansion Project from October 19, 2019 through October 18, 2020. All previously described mitigation, monitoring, and reporting requirements from the 2018 IHA are incorporated.

Dated: October 18, 2019.

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Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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